

ILLINOIS POLLUTION CONTROL BOARD
November 7, 2002

DAVID L. WEBER and RACHEL B. WEBER,)	
)	
Complainants,)	
)	
v.)	PCB 02-157
)	(Citizens Enforcement – Noise)
CISCO UNITED METHODIST CHURCH,)	
)	
Respondent.)	

ORDER OF THE BOARD (by M.E. Tristano):

This order denies respondent’s motion for summary judgment, and orders this citizens’ noise complaint to proceed to hearing as previously ordered, for the reasons discussed below.

On March 18, 2002, David L. Weber and Rachel B. Weber (complainants) filed a noise pollution complaint against Cisco United Methodist Church (respondent). *See* 415 ILCS 5/31(d) (2000); 35 Ill. Adm. Code 103.204. Complainants alleged that respondent violated sections 900.102 and 901.104 of the Board’s noise regulations. 35 Ill. Adm. Code 900.102 and 901.104. Complainants allege that respondent violated these provisions by 1) broadcasting recorded church bells or chimes through loudspeakers located on the top of the Church bell tower and 2) ringing actual bells at various times and days of the week. On May 2, 2002, the Board found that, pursuant to Section 901.107 of the Board’s regulations, the alleged violation of Section 901.104 of the Board’s regulations was frivolous, and struck it from the complaint. The Board found that the remaining alleged violation of the Board’s regulations was neither duplicitous nor frivolous.

On September 17, 2002, the respondent filed a motion for summary judgment, accompanied by a cover sheet entitled “motion for leave to file late answer.” On September 19, 2002, the complainants filed a response to motion for summary judgment.

STANDARD OF DECISION

Summary judgment is appropriate when the pleadings, depositions, admissions on file, and affidavits disclose that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E. 2d 358, 370 (1998). In ruling on a motion for summary judgment, the Board “must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing part”. *Id.* Summary judgment “is a drastic means of disposing of litigation,” and therefore it should be granted only when the movant’s right to the relief is clear and free from doubt.” *Id.* citing Purtill v. Hess, 111 Ill. 2d 199, 240, 489 N.E.2d 867, 871 (1986). However, a party opposing a motion for summary judgment may not rest on its pleadings, but must “present

a factual basis which would arguably entitle [it] to a judgment.” Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2d Dist. 1994).

THE PARTIES’ ARGUMENTS

Respondent’s motion, which is supported by affidavit, asserts several facts which it believes justify grant of summary judgment. The respondent reports that on or about July 29, 2002, the complainants moved from their residence in the Village of Cisco and now reside in the City of Decatur. This new home is approximately fifteen miles from the bells and carillon. At such a distance, the respondent argues, the bells and carillon can no longer be heard by the complainants at their present location. As a result, the respondent contends that the alleged noise pollution no longer interferes with complainants’ enjoyment. Therefore, respondent states there is no genuine issue of material fact, as the complainants can no longer be affected by respondent’s alleged activities. Respondent therefore concludes that it is entitled to judgment as a matter of law, and requests that the complaint be “dismissed and stricken.” Mot. At 3.

In response, complainants assert additional facts, which they have not supported by affidavit. In summary, complainants acknowledge that they have moved their home, but that they seek relief for the past effects of nuisance noise on their home, as well as continuing effects of nuisance noise on a garage and workshop they continue to own.

More specifically, the complainants respond that at the time of the filing of the complaint on March 18, 2002, their Cisco property consisted of their residence on Lot 5 of Block 2 “in the original town of Cisco” and their detached garage and workshop on Lots 3 and 4 of Block 2 in the town of Cisco. The complainants state they presently reside at 2830 South Forrest Green Drive, Decatur. They state they vacated their residence and sold their property on Lot 5 of Block 2 on July 29, 2002 “to seek immediate relief from the noise pollution”. Response, para. 9.

The complainants maintain that the respondent has violated Section 900.102 of the Board’s regulations prior to, at the time of and since the filing of their complaint until July 29, 2002, for their properties at Lots 3, 4, and 5 of Block 2. . The complainants argue they continue to own their garage and workshop located on Lots 3 and 4 of Block 2, and that noise violations continue to impact this property.

DISCUSSION

As discussed above, summary judgment is appropriate when the pleadings, depositions, admissions on file, and affidavits disclose that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998). The Board finds that in this case summary judgment is not appropriate.

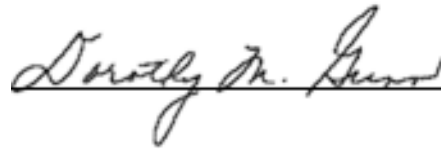
Although there is no disagreement between the parties that the Webers have moved, there continue to be genuine issues of material fact which require that the case proceed to hearing. The fact that complainants have sold their home does not entitle respondent to judgment as a matter of law as to any past violations. As complainants put it, “evidence of fact and allegations

of interference” can be better developed at hearing where examination and cross-examination of the witnesses can occur.

The Board denies the motion for summary judgment. This matter shall proceed to hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 7, 2002, by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board